HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.12989 of 2005

Date: 26th December, 2005

Between:

1. Baddam Prabhakar S/o.Narayan Reddy, R/o.Attapur,
Rajendranagar Mandal, Ranga Reddy District and
others.

.....Petitioners

and

1. The District Collector, Ranga Reddy District,
at Hyderabad andothers.

.....Respondents

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.12989 of 2005

ORDER:

This writ petition has been filed by the petitioners, who are six in number, with a prayer to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the District Collector, Ranga Reddy District, at Hyderabad-1st respondent in issuing the Notification No.G2/5812/98, dated 28.10.1998, under Section 4(1) of the Land Acquisition Act, 1894, (for short, 'the Act') as amended by Act XXXVIII of 1923, published in A.P. Gazette on 06.11.1998 as arbitrary, illegal and violative of Articles 14 and 21 of the Constitution of India.

2. The petitioners are owners and possessors of the lands comprising Survey Nos.10, 11, 12, 15, 16, 18, 19 and 20 of Attapur village, Rajendranagar Mandal, Ranga Reddy District. Notification bearing No.G2/5812/98 dated 28.10.1998 came to be published in A.P.Gazette on 06.11.1998 proposing to acquire various lands in Attapur Village, Rajendranagar Mandal, Ranga Reddy District for public purpose *to wit* for construction of new Sewerage Treatment Plants (STPs 25 MLD capacity). Under the said notification, lands admeasuring Ac.16.00 guntas comprising Survey Nos.10, 11, 12, 15, 16, 18, 19 and 20 belonging to the petitioners were sought to be acquired for the purpose of construction of STPs. While issuing the notification, enquiry under Section 5-A of the Act came to be dispensed with by invoking the urgency clause under sub-section (4) of Section 17 of the Act. Draft Declaration under Section 6 of the Act came to be published on 04.12.1998. No further action has been taken by the Government in pursuance of the Section 4(1) Notification and Section 6 declaration. Subsequently, on 13.06.2005 the subordinates of the respondents along with the Mandal Revenue Inspector visited the lands and asked the petitioners to vacate the lands. On enquiry, the petitioners came to know that the lands belonging to them are sought to be taken possession by the respondents in pursuance of the notification issued under Section 4(1) of the Act which was published in the A.P.Gazeette dated 06.11.1998. Though Section 4(1) Notification was issued on 28.10.1998, no further proceedings were taken by the respondents under the Act. Under Section 11-A of the Act, an award under Section 11 of the Act shall be made by the Collector within a period of two years from the date of publication of the declaration and if no award is made within the said period, the entire proceedings for the acquisition of the land shall stand lapsed. Initiation of further proceedings according to the petitioners, after lapse of about six or seven years from the date of declaration under Section 6 of the Act are not legal and proper and therefore, the same are liable to be declared as arbitrary and illegal.

3. The respondents filed counter-affidavits. One K.Mallesham has sworn to the counter-affidavit filed on behalf of the respondents 1 and 2. It is stated in the counter-affidavit that General Manager (Engineering) HMWS and SB,

Hyderabad has sent requisition for acquisition of lands for construction of STP 25 MLD capacity at Attapur Village, Rajendranagar Mandal, Ranga Reddy District. The lands proposed to be acquired have been demarcated and the Assistant Director, S&I.R., Ranga Reddy district has sent the attested sub-division record. Accordingly, Ac.63.13 guntas comprising Survey Nos.2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 507, 508, 109, 510, 511, 512, 513, 514 and 520 situated at Attapur village, Rajendranagar Mandal, Ranga Reddy District have been identified. Notification under Section 4(1) and declaration under Section 6 of the Act have been submitted to the District Collector, Ranga Reddy District, which have been approved and published in the A.P.Gazette No.RR-20, dated 06.11.1998 and RR-21 dated 09.11.1998 respectively. Aggrieved by the above notification, the persons interested over the lands have filed writ petition before this Court contending that they have purchased the lands comprising Survey No.9 and constructed houses. They sought for stay of all further proceedings including their dispossession from the lands. This Court directed the respondents not to dispossess them from the lands pursuant to the notification No.G2/5812/98 dated 28.10.1998 published in Eenada dated 02.11.1998 vide Orders in WPMP No.42058 of 1998 in WP No.34172 of 1998 dated 09.12.1998. Hence, possession of the lands could not be taken as envisaged under Sections 9(1), 10 and 9(3) and 10 of the Act. The said writ petition ended in dismissal. The petitioners therein filed objections for acquisition of their plots existing in Survey No.9 on 09.12.1998. The persons interested over Survey Nos.10 to 14, 16 to 19 have also filed petition seeking time for filing relevant documents to establish their rights over the said land on 27.12.1998. Subsequently, award enquiry was fixed on 10.11.2003. The persons interested over the lands have filed their claims/objections on 04.12.2003. Possession of the lands under acquisition as mentioned in Form-10 has been taken on 18.06.2005. The persons interested over the lands comprising Survey nos.10 to 14, 16 to 19 have filed petition seeking time for filing relevant documents to establish their rights over the said lands on 27.12.1998. Acquisition proceedings have been delayed due to pendency of Writ Petition No.34172 of 1998 and interim orders passed therein vide order dated 09.12.1998 in WPMPNo.42058 of 1998. I deem it appropriate to refer paras.6 to 8 of the counter affidavit and they are:

> “6. The persons interested have also filed objections in acquisition of their

plots existing in Sy.No.9 on 09.12.1998. The persons interested over Sy.Nos.10 to 14, 16 to 19 have filed petition seeking time for filing relevant documents to establish their right over the said land on 27.12.1998. Subsequently the award enquiry was fixed on 10.11.2003. The persons interested over the lands have filed their claims/objections on 04.12.2003. The notice U/S.15-A of the Land Acquisition Act dated 30.04.2005 was also served over the persons interested to file the documentary evidence in support of their title over the lands under acquisition by 16.05.2005. A notice in Form-10 and adjourned enquiry dated 02.06.2005 fixing the date of enquiry on 25.06.2005 were also served. The possession of the lands under acquisition as mentioned in Form-10 have also been taken possession on 18.06.2005. The persons interested over the lands Sy.Nos.10 to 14, 16 to 19 have filed petition seeking time for filing relevant documents to establish their rights over the said land on 27.12.1998.

7. In reply para.5 it is submitted that the lands under acquisition are located on the banks of River Moosi and grass fodder is being grown. The market value of the lands under acquisition has also been approved by the Collector, Ranga Reddy district on 18.06.2005. The award will be passed duly observing the procedure laid down under the Land Acquisition Act in due course.

8. In reply to para.6 it is submitted that acquisition proceedings have been delayed due to filing of the W.P.No.34172/98 and granting of stay vide Order in WPMP No.42058 of 1998 in WP No.34172/98 dated 09.12.1998. The said WP was disposed by the Hon'ble Court on 06.04.2005. There are no developments over the lands Sy.Nos.10, 11, 12, 15, 16, 18, 19 and 20 till date. There is only the fodder growth over the lands. The lands are fully B.C. soil lands. It is not true to say that the present petitioners have invested huge amounts and developed the said lands. It is not true to say that the effect of the delay in completing the acquisition proceedings is that of depriving the petitioners of the compensation at the market value. The delay is caused due to filing of the W.P.No.34172/98 and granting of stay vide order in WPMP No.42058 of 1998 in WP No.34172/98 dated 09.12.1998. The said WP was disposed by the Hon'ble Court on 06.04.2005."

4. 3rd respondent filed a separate counter-affidavit. One V.Raja Reddy has sworn to the counter-affidavit filed on behalf of the 3rd respondent. It is stated in the counter-affidavit that the Government has taken a decision to acquire the said lands for the purpose of construction of new STP 25 MLD capacity and accordingly notification under section 4(1) and draft declaration under Sec.6 of the Land Acquisition Act came to be issued. The Land Acquisition Officer handed over possession of land of Ac.63-13 guntas to HMWS & SB on

18.6.2005 and the Board has deposited an amount of Rs.8.00 crores towards compensation.

5. Heard learned counsel appearing for the petitioners, learned Government Pleader for Land Acquisition appearing for the respondents 1 and 2 and learned Standing Counsel for the 3rd respondent.

6. Learned counsel appearing for the petitioners contends that in view of Sec.11-A the entire land acquisition proceeding in respect of the lands of the petitioners lapsed as no award under Sec.11 had been made within two years from the date of declaration under Sec.6 of the L.A. Act. He refers Section 11-A of the Act in support of his submission.

7. Learned Government Pleader for Land Acquisition appearing for the respondents 1 and 2 submits that the proceedings could not be completed because some of the land owners obtained stay of all further proceedings and after disposal of the writ petition filed by some of the land owners, further proceedings have been commenced and enquiry is in progress and therefore, acquisition proceedings are saved under the proviso to Section 11-A of the Act.

8. Learned Standing Counsel appearing for the 3rd respondent submits that possession of Ac.63.13 guntas of land has been handed over to the 3rd respondent and the 3rd respondent has deposited an amount of Rs.8.00 crores towards the compensation, and therefore, the writ petition is liable to be dismissed.

9. The facts of the case are not in dispute. Section 4(1) Notification has been published in the A.P.Gazette on 06.11.1998 and Section 6 declaration has been published in the A.P.Gazette on 09.11.1998. The latest of the three publications of Section 6 Declaration is the paper publication in *Pledge*, English daily, dated 06.12.1998. The issue involved in the writ petition is very simple and it is whether the proceedings initiated for acquisition of the lands are lapsed under

Section 11-A of the Act.

10. It is the contention of the petitioners that since award has not been passed under Section 11 of the Act within the stipulated period of two years from the date of publication of the declaration, the entire proceedings for acquisition of their lands are lapsed under Sec.11A of the Act. Whereas, it is the contention of the respondents that proceedings could not be concluded because of the interim orders secured by some of the land owners.

11. Before referring Section 11-A of the Act, I make myself clear that the petitioners are concerned with Ac.16.00 guntas of the land comprising Survey Nos.10, 11, 12, 15, 16, 18, 19 and 20 of Attapur Village, which was sought to be acquired for the purpose of construction of new STPs 25 MLD capacity. More precisely the petitioners claimed ownership over the lands as detailed hereunder:

Survey No. 10 -- Ac. 2.18 guntas

Survey No.11 -- Ac. 1.34 guntas

Survey No.12 -- Ac. 0.27 guntas

Survey No.15 -- Ac. 2.10 guntas

Survey No.16 -- Ac. 2.18 guntas

Survey No.18 -- Ac. 1.32 guntas

Survey No.19 -- Ac. 1.37 guntas

Survey No.20 -- Ac. 2.24 guntas

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Total --Ac.16.00 guntas

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The learned Government Pleader for Land Acquisition appearing for the respondents 1 and 2 strenuously contends that award proceedings could not be completed within the period stipulated under Section 11-A of the Act because

some of the land owners approached this Court by filing W.P.No.34172 of 1998 and secured interim order dated 09.12.1998 in WPMP No.42058 of 1998. It appears some of the owners of the lands, which are the subject matter of the notification under Section 4(1) and declaration under Section 6, approached this Court by filing WP No.34172 of 1998. They also secured interim orders in WPMP No.42058 of 1998. The interim orders passed in the said writ petition reads as follows:

> "ORDER:
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> Govt. Pleader for Land Acquisition takes notice and requested two weeks time for getting instructions and for filing counter. In the meanwhile, the respondents are directed not to take possession of the land in question pursuant to the notification in No.G2/5812/97, dt.28.10.1998 published in Eenadu dt.02.11.1998"

The lands claimed by the present petitioners are not the subject matter of the above referred writ petition. It is not the case of the respondents that entire Section 6 declaration is suspended. Order passed in WPMP No.42058 of 1998 in WP No.34172 of 1998 clearly shows that the interim relief of dispossession was confined only to the petitioners therein. It can be said without any controversy that the lands claimed by the petitioners herein are not the subject matter in W.P.No.34172 of 1998. At this juncture, I deem it appropriate to refer Section 11-A of the Act. Section 11-A of the Act reads:

> "S.11-A. **Period within which an award shall be made:**-- The Collector shall make an award under section 11 within a period of two years from the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.
>
> Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.
>
> Explanation:- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded."

In view of Section 11-A of the Act, an award has to be made within two years

from the date of publication of the declaration. Failure to adhere to this time frame is fatal to the acquisition proceedings. The stay of dispossession secured by the petitioners in W.P.No.34172 of 1998 is of no help to the respondents to contend that award could not be passed in respect of the lands claimed by the petitioners. When no award was passed within the period of two years stipulated under Section 11-A of the Act, the consequence of which is, the entire proceedings under the Act in respect of the lands claimed by the petitioners are lapsed.

12. Much emphasis has been laid by learned counsel appearing for respondents 1 and 2 that possession has been taken by invoking the urgency clause and thus the provisions of Sec.11-A cannot be made applicable to the circumstances of the case. Sec.6 declaration came to be published in the Andhra Pradesh Gazettee on 6-11-1998. The petitioners filed this writ petition on 17-6-2005 and moved WPMP.No.16486 of 2005 seeking interim direction to the respondents not to dispossess them from the lands in question. This court passed the following interim order on 17-6-2005:

" At the request of the learned Government Pleader for Land Acquisition, the matter is adjourned by one week.

Meanwhile, the respondents are directed not to take coercive steps to take possession of the land. Further, the respondents are directed to get instructions for payment of market value as on the date of taking possession. Post after one week in the motion list."

3rd respondent stated in the counter affidavit that possession of the lands has been handed over to HMWS & SB on 18.6.2005. When there is a specific direction to the respondents issued on 17.6.2005 not to dispossess the petitioners from the lands in question, the contention of the respondents that possession of the lands have been taken on 18.6.2005 cannot be accepted.

13. Accordingly, the writ petition is allowed declaring the action of the respondents in proceeding with the award enquiry in pursuance of the notification No.G2/5812/98, dated 28.10.1998 published in A.P. Gazette on 06.11.1998 in respect of the lands claimed by the petitioners is contrary to the

provisions of Section 11-A of the Act. No costs.

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B.SESHASAYANA REDDY, J.

Date: 26.12.2005

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HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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